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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

3 LOUIS FLORES,

4 Plaintiff,

5 v.

17 CV 36 (JGK)

6 UNITED STATES DEPARTMENT OF
7 JUSTICE,

8 Defendant.

9 New York, N.Y.
10 October 19, 2017
11 11:00 a.m.

12 Before:

13 HON. JOHN G. KOELTL,

District Judge

14 APPEARANCES

15 LOUIS FLORES
16 Pro Se Plaintiff

17 JOON H. KIM
18 Acting United States Attorney for the
19 Southern District of New York
20 REBECCA S. TINIO
21 Assistant United States Attorney
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1 THE DEPUTY CLERK: Flores v. The United States. All
2 parties, please state who they are for the record.

3 MR. FLORES: Louis Flores, pro se plaintiff.

4 MS. TINIO: Good morning, your Honor. Rebecca Tinio
5 from the U.S. Attorney's Office for the defendant.

6 THE COURT: Good morning.

7 The purpose of this conference is the defendants asked
8 for the conference as a premotion conference to make a
9 dispositive motion. The plaintiff asked for an adjournment of
10 the conference, which I granted, and so the conference is on
11 today.

12 So, Ms. Tinio, what's the nature of the motion?

13 MS. TINIO: Sure, your Honor. To give a brief
14 background, we are going to ask for a motion schedule to be set
15 for a motion for summary judgment. Back in June, per the
16 Court-ordered schedule, we completed our FOIA production.

17 THE COURT: Keep your voice up, please.

18 MS. TINIO: Yes, your Honor. I apologize.

19 In June, per the Court-ordered schedule, we completed
20 our production pursuant to FOIA. Mr. Flores requested some
21 time to review the production so he could raise any issues that
22 he had. He provided comments and questions to us on July 9.
23 On July 24 and 25, I provided responses to Mr. Flores' comments
24 and questions.

25 In the intervening time we've exchanged numerous

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1 e-mails regarding Mr. Flores' proposals for possible
2 resolution. We have conferred by phone. Mr. Flores also
3 submitted some letters to the Court during that time. And I
4 also have attempted to confer on an agreed briefing schedule in
5 addition to providing information in response to Mr. Flores'
6 requests, that Mr. Flores has not engaged substantively in
7 conferring on a briefing schedule.

8 So it appears, your Honor, we are at an impasse and
9 briefing will be needed to resolve the case. We anticipate
10 putting in a motion for summary judgment supported by an agency
11 declaration from the Executive Office of U.S. Attorneys and
12 also by Vaughn indices as appropriate. And the briefing will
13 establish the adequacy of the government's searches and also
14 the applicability of FOIA exemptions.

15 I have asked Mr. Flores if he would agree to a
16 schedule whereby the government would file its opening brief on
17 December 19, that is approximately 60 days from now. He had
18 not responded to that request, but that is the date we would
19 request for our opening brief, and we're amenable to what
20 Mr. Flores and the Court would like as to the rest of the
21 schedule.

22 THE COURT: Okay. Mr. Flores?

23 MR. FLORES: Your Honor, since the initial conference,
24 I've been trying to reach a resolution as the defendant has
25 stated to this litigation for various reasons. Number one, I

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1 would be at a disadvantage if I were to commence -- if I were
2 subjected to dispositive motion practice against the U.S.
3 Attorney's Office, because I am appearing as a pro se in forma
4 pauperis plaintiff. And secondly, I have concerns that at the
5 initial conference, there were statements made by the Court
6 that the defendant may not be compelled to comply with FOIA or
7 to release all of the responsive records due to sensitivity
8 around the reputation of the defendant.

9 I believe that that concern or that sensibility
10 creates a bias against the plaintiff, myself. And I have asked
11 that the Chief U.S. District Court Judge consider reassigning
12 this case if we do move forward with dispositive motion
13 practice.

14 The Court has not addressed my concerns, and before
15 any discussion is made about a briefing schedule, I believe
16 that we cannot ignore the fact that there is a reasonable
17 expectation that there may be bias against the pro se plaintiff
18 in this matter. And I believe that that must be resolved
19 completely before we have a discussion about dispositive motion
20 practice and setting a briefing schedule for that effect.

21 THE COURT: All right. First, there is no reasonable
22 basis for disqualification of the Court. The Court has never
23 given any indication that it would decide any issues in this
24 case, other than on the facts and the law. The Court is not
25 biased in any way with respect to the parties or the issues in

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1 this case, and there would be no reasonable basis to find such
2 disqualification.

3 I appreciate, because you've copied to me, the letter
4 that you sent to the Chief Judge. And of course the Chief
5 Judge is welcome, free, to make any decision with respect to
6 any letter that's sent to the Chief Judge.

7 But to the extent that the motion for disqualification
8 is directed to me, which it wasn't in the letter to the Chief
9 Judge, there is no basis for the motion before me. And that
10 motion, to the extent it's made before me, is denied.

11 There is also no basis to defer the dispositive
12 motion. Mr. Flores, you brought this case. I set the schedule
13 for the government to respond to the FOIA request. After
14 discussing it on the record with you, the government now
15 maintains that it has produced all of the records in response
16 to the FOIA request.

17 MR. FLORES: That's not true, your Honor.

18 THE COURT: Okay. Just from listening to the way in
19 which it was presented, apparently, there are some documents
20 that were not produced on the basis of various FOIA exemptions,
21 hence the reference to a Vaughn index. When there are those
22 disputes with respect to whether all the records have been
23 produced and whether the FOIA exemptions are properly asserted,
24 that gets resolved by motions. And if the parties are unhappy
25 on either side with the disposition by the District Court on

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1 the motion, then the next step is to appeal to the Court of
2 Appeals. But the case can't just sit here.

3 You've requested the documents. Some of them were
4 produced. The government says it has completed the document
5 production, except for those as to which an exemption is being
6 claimed.

7 And so the next step is, if the parties can't resolve
8 that in any way, the next step is government makes its motion,
9 and whatever you would like to say in response to that motion,
10 you can say. The government replies. I decide. If either of
11 you are unhappy with what I do, then you take it up to the
12 Court of Appeals.

13 But it just can't sit here. At earlier times you
14 complained that the government wasn't making its production
15 quick enough. Now we have to decide that, and I'll decide it
16 based on the facts and the law, in response to what both sides
17 say. And if either side is not satisfied, you then take it up
18 to the Court of Appeals.

19 MR. FLORES: If I may, your Honor. I'd like to --
20 because I am appearing in forma pauperis, I'd like to request a
21 copy of the transcript of the initial hearing and of this court
22 conference, please.

23 There are two other procedural issues I'd like to
24 raise at this time. If the Court -- if your Honor will be
25 keeping jurisdiction over this proceeding, I do intend to

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1 appeal the decision to deny the reassignment of this case. And
2 so, therefore, I will need the copy of the transcript for the
3 initial conference and for today's conference. And that's one
4 procedural issue.

5 And the second one is, at the initial conference, I
6 made a request to the Court that I be granted ECF access, and
7 you made such an indication in a filing, which I took down to
8 the pro se office, which they interpreted only meant I would be
9 granted access to ECF notifications. And that's not sufficient
10 if I'm going to have to be placed in a position where I'm going
11 to have to enter into the record all of the exhibits that the
12 government has produced that form the basis of the FOIA
13 responses. And that includes these two Redwelds, this hard
14 drive, this CD disc, and this thumb drive. So all of that has
15 to be entered into the record, and I don't want to be placed at
16 a disadvantage, which I cannot afford, to pay for copying,
17 duplication, and service, and it would be just for me to be
18 able to make my own ECF filings electronically, so I don't have
19 to pay for copying, postage and duplication. So I need for you
20 to look at and approve this.

21 But I do need copies of the transcripts for the
22 initial conference and for today's conference, so I can file my
23 notice of appeal with the Second Circuit so that this case can
24 be reassigned before a briefing schedule is set.

25 THE COURT: First, with respect to the transcripts,

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1 the government should order a copy of the transcripts, to the
2 extent that the government has not already done that, and
3 provide the transcripts to the plaintiff, and confirm on the
4 record that the government has obtained the transcripts and
5 provided a copy to the plaintiff.

6 Second, with respect to ECF access, there is a means
7 for pro se litigants to access ECF and to make ECF filings
8 themselves. And I will enter an order that allows the
9 plaintiff to do that. Okay?

10 MR. FLORES: Thank you. I will file my notice of
11 appeal within the 30 days of the order that was entered that
12 set today's conference, which was signed October 10, so that
13 gives me until about, more or less, November 10.

14 MS. TINIO: Your Honor, may I ask a question?

15 THE COURT: Sure.

16 MS. TINIO: The normal timeline for receiving
17 transcripts, and the government will certainly do that, is
18 about four weeks, perhaps 30 days. If the Court would like us
19 to get a rush that --

20 THE COURT: Yes. Do it, get the transcript on an
21 expedited basis.

22 MR. FLORES: That should be about a week, your Honor.

23 THE COURT: Yes.

24 MS. TINIO: Thank you.

25 THE COURT: Confirm that the transcripts have been

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1 obtained and provided to the plaintiff.

2 MS. TINIO: Yes, your Honor.

3 THE COURT: Meanwhile, I will set up a schedule for
4 the motion for summary judgment.

5 The government's motion for summary judgment is due --
6 December 19 is a Tuesday. So December 15. The plaintiff's
7 response is due February 16. And the government's reply is due
8 March 9.

9 MR. FLORES: I have to object to the setting of this
10 schedule.

11 THE COURT: What's the basis for the objection?

12 MR. FLORES: Your Honor, I'm going to be requesting
13 that the Second Circuit review my request that this case be
14 assigned to a new judge. And the fact that this hearing was
15 set in response to that request means that the decision by this
16 Court was a denial of my request for this case to be
17 reassigned. And that's what I will be appealing to the Second
18 Circuit.

19 THE COURT: You're welcome to take any appeals that
20 you think are available to you. There is no stay of this case,
21 and so long as the case is before me, the case proceeds.

22 Even though it was not clear that you had actually
23 made the motion to me, I denied the motion to disqualify me
24 because there is no basis to conclude on the facts or the law
25 that I am not fair and impartial in this case. There is no

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1 basis for disqualification. You're welcome to take any appeals
2 that you want.

3 I adjourned the date for this hearing because you
4 asked that the date be adjourned. It is certainly not another
5 basis for appeal that I adjourned the hearing at your request.
6 But if you want to raise that or any other grounds with any
7 court, you're welcome to do that. All that I can do is to
8 decide the matters that are before me on the facts and the law.
9 I have a case, it is not stayed, it proceeds. I set the
10 schedule.

11 All right? Anything else? Okay. Good morning, all.

12 MS. TINIO: Thank you, your Honor.

13 (Ms. Tinio is not present)

14 THE COURT: Do you have a document that you have
15 filled out to get access to ECF?

16 MR. FLORES: Yes. But I don't know if it is fair to
17 be speaking without the presence of the defendant here.

18 THE COURT: Hold on. Okay. Just wait, please. We'll
19 call the government and get them back. Okay? Let's do the
20 next case while we're waiting.

21 MR. FLORES: Your Honor, I can file this downstairs
22 with the pro se office.

23 THE COURT: I want to get the government back. Just
24 hold on a moment.

25 MR. FLORES: I have to work today.

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1 THE COURT: Okay.

2 (Mr. Flores is not present)

3 THE COURT: The plaintiff left, so we'll wait for it
4 to be filed in the pro se office.

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